

International Law Studies—Volume 6

International Law Topics

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TOPIC V.

What regulations should be made in regard to mail and passenger vessels in time of war?

CONCLUSION.

(a) Neutral mail or passenger vessels, of regular lines established before and not in contemplation of the outbreak of hostilities, bound upon regular voyages and furnishing satisfactory government certification that they are mail or passenger vessels, and do not carry contraband, are exempt from interference except on ample grounds of suspicion of action not permitted to a neutral.

(b) Mail or passenger vessels of belligerents, of similar lines, upon regular voyages, plying to neutral ports, should be exempt from interference under such restrictions as will prevent their use for war purposes.

(c) Mail or passenger vessels, similarly plying between belligerent ports, may, under such restrictions as the belligerents may agree upon, be exempt from interference.

DISCUSSION AND NOTES.

Classes of mail and passenger vessels.—The mail and passenger vessels plying to and from a given belligerent port at the outbreak of war may be—

(1) Vessels of the belligerent state having jurisdiction over the port.

(2) Vessels of the opposing belligerent.

(3) Neutral vessels.

Vessels of allies would fall under those of the state to which they were allied.

(1) Over vessels of the first class, the state having jurisdiction over the port would have full authority within the limits of international and other agreements.

(2) To vessels of the opposing belligerent under present practice no special favor need be shown.

In the case of the Panama, in 1900—

It was argued in behalf of the claimant that, independently of her being a merchant vessel, she was exempt from capture by

reason of her being a mail steamship and actually carrying mail of the United States.

There are instances in modern times, in which two nations, by convention between themselves, have made special agreements concerning mail ships. But international agreements for the immunity of the mail ships of the contracting parties in case of war between them have never, we believe, gone further than to provide, as in the postal convention between the United States and Great Britain in 1848, in that between Great Britain and France in 1833, and in other similar conventions, that the mail packets of the two nations shall continue their navigation, without impediment or molestation, until a notification from one of the governments to the other that the service is to be discontinued; in which case they shall be permitted to return freely, and under special protection, to their respective ports. And the writers on international law concur in affirming that no provision for the immunity of mail ships from capture has as yet been adopted by such a general consent of civilized nations as to constitute a rule of international law. (9 Stat. 969; Wheaton (8th ed.), pp. 659-661, Dana's note; Calvo (5th ed.), secs. 2378, 2809; De Boeck, secs. 207, 208.) De Boeck, in section 208, after observing that, in the case of mail packets between belligerent countries, it seems difficult to go further than in the convention of 1833, above mentioned, proceeds to discuss the case of mail packets between a belligerent and a neutral country, as follows: "It goes without saying that each belligerent may stop the departure of its own mail packets. But can either intercept enemy mail packets? There can be no question of intercepting neutral packets, because communications between neutrals and belligerents are lawful, in principle, saving the restrictions relating to blockade, to contraband of war, and the like; the rights of search furnishes belligerents with a sufficient means of control. But there is no doubt that it is possible, according to existing practice, to intercept, and seize the enemy's mail packets."

The provision of the sixth clause of the President's proclamation of April 26, 1898, relating to interference with the voyages of mail steamships, appears by the context to apply to neutral vessels only, and not to restrict in any degree the authority of the United States, or of their naval officers, to search and seize vessels carrying the mails between the United States and the enemy's country. Nor can the authority to do so, in time of war, be affected by the facts that before the war a collector of customs had granted a clearance, and a postmaster had put mails on board, for a port which was not then, but has since become, enemy's country. Moreover, at the time of the capture of the *Panama*, this proclamation had not been issued. Without an express order of the Government, a merchant vessel is not privileged from search or seizure by the fact that it has a government mail on board. (The Peterhoff, 5 Wall., 28, 61.)

The mere fact, therefore, that the *Panama* was a mail steamship, or that she carried mail of the United States on this voyage, does not afford any ground for exempting her from capture. (176 U. S. Supreme Court Reports, 535.)

The position of the court in the case of the *Panama* seems to be correct. There is at present no way by which an adequate guaranty can be secured that vessels of one belligerent will not in some manner act to the injury of the other when they are allowed freedom in transit.

(3) The main questions arise in regard to the vessels of neutrals plying to belligerent ports. Should mail vessels of a neutral be allowed freedom in such commerce?

Treatment of mail vessels.—The British regulations in regard to the carriage of dispatches according to the Manual of the Naval Prize Law provide—

CARRYING ENEMY'S DISPATCHES.

96. A commander should detain any neutral vessel which has on board enemy's dispatches.

97. By the term "enemy's dispatches" are meant any official communications, important or unimportant, between officers, whether military or civil, in the service of the enemy on the public affairs of their government.

98. But to this rule there is one exception, namely, official communications between enemy's home government and the enemy's ambassador or consul resident in a neutral state. Such communications are permissible on the presumption that they concern the affairs of the neutral state, and therefore are of a pacific character.

99. Official communications between the enemy and neutral foreign governments are under no circumstances ground for detention.

EXCUSES TO BE DISREGARDED.

100. It will be no excuse for carrying dispatches that the master is ignorant of their character.

101. It will be no excuse that he was compelled to carry the dispatches by duress of the enemy.

102. The mail bags carried by mail steamers will not, in the absence of special instructions, be exempt from search for enemy dispatches.

LIABILITY OF VESSEL—WHEN IT BEGINS, WHEN IT ENDS.

103. A vessel which carries enemy's dispatches becomes liable to detention from the moment of quitting port with the dispatches on board, and continues to be so liable until she has

deposited them. After depositing them the vessel ceases to be liable.

ENEMY'S DISPATCHES NOT TO BE REMOVED.

104. The commander will not be justified in taking out of a vessel any enemy's dispatches he may have found on board, and then allowing the vessel to proceed; his duty is to detain the vessel and send her in for adjudication, together with the dispatches on board.

PENALTY.

105. The penalty for carrying enemy's dispatches is the confiscation of the vessel and such part of the cargo as belongs to her owner.

après
~~Pillet~~ says of these regulations:

Le Manuel des prises reproduit toutes les rigueurs des anciennes décisions de cours de prises britanniques; certaines de ces rigueurs ne semblent plus de mise aujourd'hui. Il s'est opéré, dans les relations maritimes, des changements considérables dont il y aurait lieu de tenir compte. C'est à quoi s'applique la doctrine. (La guerre maritime et la doctrine anglaise, sec. 232.)

By Article XX of the postal convention between the United States and Great Britain in 1848 mail packets were to "continue their navigation without impediment or molestation until six weeks after a notification shall have been made, on the part of either of the two Governments, and delivered to the other, that the service is to be discontinued; in which case they shall be permitted to return freely, and under special protection, to their respective countries."

The United States proclamation of April 26, 1898, states:

6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

The Spanish instructions for the exercise of the right of visit in 1898 state that in consequence of the visit the vessel is captured in the following case:

7. If she carries letters and communications of the enemy, unless she belong to a marine mail service, and these letters or communications are in bags, boxes, or parcels with the public correspondence, so that the captain may be ignorant of their contents.

It may be entirely possible for a vessel to give very valuable assistance by way of furnishing information. Spain in 1898 stated that a vessel was liable to capture—

8. If the vessel is employed in watching the operation of war, either freighted by the other belligerent or paid to perform this service.

9. If the neutral vessel takes part in this employment, or assists in any way in such operations.

The Japanese regulations governing captures at sea in 1904 provided:

ART. XXXIV. In visiting or searching a neutral mail ship, if the mail officer of the neutral country on board the ship swears in a written document that there are no contraband papers in certain mail bags those mail bags shall not be searched. In case of grave suspicion, however, this rule does not apply.

ART. LXVIII. When a mail steamer is captured, mail bags considered to be harmless shall be taken out of the ship without breaking the seal, and steps shall be taken quickly to send them to their destination at the earliest date.

The Russian instructions concerning the stopping, examining, and detaining of vessels state:

16. After having examined the ship's papers, the officer asks the master to present what mail he has, searches for correspondence of the hostile government and, generally speaking, all packages addressed to the enemy's ports.

Cases involving mail steamers were reported during the Russo-Japanese war in 1904-5. The *Osiris*, British steamship, was stopped on May 4, 1904, by a Russian cruiser and delayed about two hours in an investigation to find whether it contained Japanese mails. On July 15 the German steamship *Prinz Heinrich* was stopped by the *Smolensk* of the Russian volunteer navy and the mail bags taken out. These, with the exception of two, were forwarded by the British steamship *Persia*, which was stopped by the *Smolensk* for that purpose.

At the time of the Russian seizures the United States Secretary of State sent the following to the United States representative in Russia:

DEPARTMENT OF STATE,
Washington, October 13, 1904.

SIR: I inclose copies of papers received from the Postmaster General, concerning the confiscation or detention by the Russian

Vladivostok squadron of mail matter from the United States on board the British steamer Calchas, seized off the Japan coast about July 26 last.

You will bring this instance of what appears to be a violation of the provisions of the Universal Postal Convention to the attention of the Russian Government, and request of it an investigation and appropriate action.

Any interruption of regular postal communication entails such serious inconvenience to various interests that, apart from the provisions of treaty, a usage has in recent years grown up to exempt neutral mails from search or seizure. In presenting this matter to the Russian Government you will refer to this fact and express the confidence of this Government that, in its treatment of the subject, the Russian Government will recognize the liberal tendency of recent international usage to exempt neutral mails from molestation.

I am, etc.,

JOHN HAY.

(Foreign Relations, U. S., 1904, p. 772.)

At the present time, with the possibilities of telegraphic communication, it hardly seems reasonable to imagine that important war correspondence of a belligerent will be intrusted to the ordinary course of the mails. Other means are so much more rapid and time is such an important element in warfare that it would seem that only in rare instances would dispatches of importance to the captor be intrusted to the mails. Dispatches thus sent would be liable to delay, loss, and other accidents. It may be that, like some other regulations, they may come so late that the necessity for their existence may have disappeared. Much of the important business of the world in time of peace is now carried on by means of the telegraph. A much greater proportion is intrusted to the telegraph in time of war.

The diplomatic and ordinary consular dispatches and correspondence between a belligerent and a neutral are not supposed to relate to hostilities, but to the relations between the belligerent and neutral only. The neutral has, therefore, rights in this correspondence, which rights must be fully respected. Such dispatches and correspondence are, therefore, generally exempt from all interference.

Ordinary dispatches and correspondence from a belligerent state may be carried by the regular means of transport without offense.

Kleen says in regard to mail vessels that there should be some distinction in granting immunity:

L'immunité doit être inconditionnelle sur les lignes purement internationales, c'est-à-dire celles qui s'étendent entre des États différents, puisque là les paquebots peuvent être censés servir sans distinction des nations. Il en découlerait l'exemption de saisie en faveur des paquebots allant entre les possessions neutres, et entre elles et les possessions des belligérants. N'importe que ces paquebots soient publics ou privés ou ressortissent à des États neutres ou belligérants, s'ils ne font aucun commerce, ils ne peuvent être saisis sans preuve préalable d'un abus de l'immunité. Au contraire, les paquebots allant entre les possessions d'un belligérant, soit dans les limites de son État, ou entre lui et ses colonies—lignes qui ne peuvent être qualifiées d'internationales—ne sauraient être réputés servir sans distinction des nations; il est juste que la partie adverse dans la guerre les considère comme nationaux, donc comme ennemis par rapport à elle, susceptibles d'une application du droit de saisie tout comme d'autres navires ennemis, s'ils naviguent sous pavillon ennemi. Seulement, il est aussi équitable que le belligérant qui, sur ces fondements et dans ces cas, veut refuser l'immunité à des paquebots faisant un service régulier sur une ligne exploitée déjà avant la guerre, le fasse savoir officiellement avant d'entreprendre aucune saisie, car les intérêts lésés par les saisies peuvent relever de nations quelconques. (2 La neutralité, p. 506.)

Commander von Uslar of the German navy suggests in regard to mail steamers, that—

An agreement may perhaps be arrived at on the lines that (a) neutral mail steamers are to be stopped and seized only in the neighborhood of the actual seat of war, and only when strong suspicion rests on them; (b) outside the actual seat of war the mails, including those of the belligerents, not to be touched. This exceptional treatment of the correspondence of the belligerents, which is in the interest of the neutrals, can have no essential disadvantage from a military point of view, as important intelligence will be transmitted by telegraph. (181 North American Review, p. 186.)

De Boeck gives the following conclusions in regard to the treatment of mail vessels:

208. Au point de vue de la protection à accorder aux paquebots-poste ennemis, il nous paraît nécessaire de distinguer trois cas: *Premier cas.* Le paquebot-poste fait communiquer les deux pays ennemis. Dans ce cas, il semble difficile d'aller plus loin que l'article 13 de la convention du 14 juin 1833, qui déclare les paquebots faisant le service postal entre Douvres et Calais exempts

d'embargo, d'arrêt de prince, de toute réquisition et de toute molestation, jusqu'à ce que l'un des deux belligérants notifie à l'autre son intention de faire cesser le service, et qui, dans ce cas, assure le retour des paquebots dans leurs ports respectifs.

Deuxième cas. Le paquebot-poste fait le service du transport des dépêches entre un pays ennemi et un pays neutre. Il va de soi que chaque belligérant pourra empêcher le départ de ses propres paquebots. Mais chacun d'eux pourra-t-il intercepter les paquebots-poste ennemis? Il ne pourra être question d'intercepter les paquebots neutres, puisque les communications entre neutres et belligérants sont licites, en principe, sauf les restrictions relatives au blocus, à la contrebande de guerre et à ses *analogues*: le droit de visite fournit aux belligérants un moyen de contrôle suffisant. Mais nul doute qu'il soit possible, d'après la pratique actuelle, d'intercepter et de saisir les paquebots ennemis. Il nous semble qu'il serait à la fois nécessaire et sans inconvénients sérieux de les *neutraliser*, c'est-à-dire de les mettre sur la même ligne que les paquebots neutres: pour les uns comme pour les autres les intérêts légitimes seront suffisamment sauvegardés par l'exercice du droit de visite.

Troisième cas. Les paquebots transportent les dépêches entre deux parties du territoire du même belligérant, par exemple, entre l'Angleterre et les Indes, la France et l'Algérie. Ici, il va encore de soi que le belligérant peut, à son gré, faire cesser ce service. Et l'autre belligérant? Il y aura souvent un grand intérêt, et nous ne croyons pas qu'il puisse s'engager à respecter ce service. Nous concluons donc qu'il serait désirable de voir intervenir des conventions qui assurent l'inviolabilité des paquebots-poste ennemis faisant le service du transport des dépêches entre le pays de chaque belligérant et un pays neutre aux conditions et sous les réserves admises à l'égard des paquebots neutres. (Propriété privée ennemi, p. 240.)

General conclusions as to mail vessels.—From this discussion it would seem to follow:

1. That mail vessels belonging to a belligerent are liable to seizure by the other belligerent.
2. That such vessels may by special agreement be exempt from capture.
3. That as the interests of neutrals may be involved in such seizure, the mails should, so far as regular, be forwarded without delay.
4. That when such vessels ply between neutral and belligerent states due notice should be given of liability to interruption.
5. Innocent neutral vessels carrying mails should be exempt from seizure.

Passenger traffic and transport service.—There is little question that the regular passenger traffic between belligerents and neutrals should be as free as the necessities of war will permit. There would be little advantage to a belligerent in interfering with such traffic.

Quite different is the transport of troops or military persons by direct agreement or in the service of a belligerent. The act is very different from the carriage of contraband which may be purely a commercial venture. The act may be of far greater service than the transport of war material. The vessel engaging in the transport of troops really enters the service of the enemy and the act becomes military in nature and the vessel, whatever its nationality, is liable to treatment as an enemy vessel. The seizure of the military persons transported would not be an adequate penalty for the vessel concerned, but the vessel itself is liable to confiscation and the persons concerned may be held as prisoners of war.

Speaking of the service of a regular passenger vessel, Hall says:

When again a neutral in the way of his ordinary business holds himself out as a common carrier, willing to transport everybody who may come to him for a certain sum of money from one specified place to another, he can not be supposed to identify himself specially with belligerent persons in the service of the state who take passage with him. The only questions to be considered are whether there is any usage compelling him to refuse to receive such persons if they are of exceptional importance, and consequently whether he can be visited with a penalty for receiving them knowingly, and whether, finally, if he is himself free from liability, they can be taken by their enemy from on board his vessel. (International Law, 5th ed., p. 674.)

When a vessel is directly used as a transport for enemy persons the condition is unlike that of an ordinary passenger vessel. Wheaton says:

Of the same nature with the carrying of contraband goods is the transportation of military persons or dispatches in the service of the enemy.

A neutral vessel, which is used as a transport for the enemy's forces, is subject to confiscation, if captured by the opposite belligerent. Nor will the fact of her having been impressed by violence into the enemy's service exempt her. The master can

not be permitted to aver that he was an involuntary agent. Were an act of force exercised by one belligerent power in a neutral ship or person to be considered a justification for an act, contrary to the known duties of the neutral character, there would be an end of any prohibition under the law of nations to carry contraband, or to engage in any other hostile act. If any loss is sustained in such a service, the neutral yielding to such demands must seek redress from the government which has imposed the restraint upon him. As to the number of military persons necessary to subject the vessel to confiscation, it is difficult to define; since fewer persons of high quality and character may be of much more importance than a much greater number of persons of lower condition. To carry a veteran general, under some circumstances, might be a much more noxious act than the conveyance of a whole regiment. The consequences of such assistance are greater, and therefore the belligerent has a stronger right to prevent and punish it; nor is it material, in the judgment of the prize court, whether the master be ignorant of the character of the service on which he is engaged. It is deemed sufficient if there has been an injury arising to the belligerent from the employment in which the vessel is found. If imposition is practiced, it operates as force; and if redress is to be sought against any person, it must be against those who have, by means either of compulsion or deceit, exposed the property to danger; otherwise, such opportunities of conveyance would be constantly used, and it would be almost impossible, in the greater number of cases, to prove the privity of the immediate offender. (Atlay's ed., p. 673.)

In an extended treatment of transport, Kleen says, very properly:

Quelquefois ont été rangés parmi les articles de contrebande de guerre certains objets qui n'y appartiennent pas, bien que leur transport pour le compte ou à destination d'un belligérant puisse être interdit. Non seulement chez des publicistes mais aussi dans des lois et traités, certaines *personnes* et *communications* sont considérées comme une espèce de contrebande, du moment qu'elles ont été apportées à un ennemi ou transportées à cause de lui, de manière à le renforcer ou l'aider dans la guerre, soit matériellement, soit même intellectuellement. C'est ainsi que se rencontrent depuis longtemps sur les listes de contrebande des objets tels que "soldats," "troupes," etc., dernièrement aussi "documents." (I La neutralité, p. 452, sec. 103.)

Later, Kleen says:

En transport des personnes ou des dépêches pour le compte d'un belligérant comme tel, ou entre ses stations, possessions ou autorités en vue de la guerre, le neutre ne se borne pas à lui

apporter purement et simplement un renfort: il se met à son service. Et ce service se fait par le transport de ce qui appartenait déjà au belligérant ou à son administration, tandis que le trafic de contrebande lui fournit quelque chose de nouveau.

Assurément, la neutralité n'exige pas l'interruption des relations personnelles et postales avec les belligérants. Il est permis de leur *amener* des personnes hors des enrôlés et des auxiliaires, ainsi que des choses non de contrebande. Il n'est pas nécessaire, non plus, de suspendre un service de communication sur le territoire d'un belligérant ou y aboutissant, qui y avait été organisé avant la guerre ou indépendamment d'elle, régulièrement et sans autre but que le trafic ordinaire, fût-ce même par des neutres. Le fait de transporter des personnes ou des choses relevant d'un belligérant, ne déroge à la neutralité que lorsque cela se fait pour lui en sa *qualité de* belligérant et pour son compte, ou bien entre ses stations ou autorités, de telle sorte que le neutre se met à sa disposition en vue de l'aider à faire passer à leur destination belliqueuse des objets ou des forces qui concernent la guerre. C'est ce qui peut avoir lieu par des transports, dans certaines circonstances, des agents diplomatiques, des militaires, des dépêches ou des approvisionnements d'un belligérant, ainsi que par le pilotage de ses navires de guerre. La neutralité serait rompue par de tels actes, indépendamment de tout usage ou convention, et quand même le service serait rendu aux deux parties belligérantes. (I Kleen. La neutralité. p. 456.)

British regulations.—The British Manual of Naval Prize Law makes very full provision in regard to the carriage of persons for the enemy:

ACTING AS A TRANSPORT.

88. A commander should detain any neutral vessel which is being actually used as a transport for the carriage of soldiers or sailors by the enemy.

89. The vessel should be detained, although she may have on board only a small number of enemy officers; or even of civil officials sent out on the public service of the enemy, and at the public expense.

90. The carriage of ambassadors from the enemy to a neutral State, or from a neutral State to the enemy, is not forbidden to a neutral vessel, for the detention of which such carriage is therefore no cause.

EXCUSES TO BE DISREGARDED.

91. It will be no excuse for carrying enemy military persons that the master is ignorant of their character.

92. It will be no excuse that he was compelled to carry such persons by duress of the enemy.

LIABILITY OF VESSEL—WHEN IT BEGINS, WHEN IT ENDS.

93. A vessel which carries enemy military persons becomes liable to detention from the moment of quitting port with the persons on board, and continues to be so liable until she has deposited them. After depositing them the vessel ceases to be liable.

PERSONS NOT TO BE REMOVED.

94. The commander will not be justified in taking out of a vessel any enemy persons he may have found on board, and then allowing the vessel to proceed; his duty is to detain the vessel and send her in for adjudication, together with the persons on board.

PENALTY.

95. The penalty for carrying enemy military persons is the confiscation of the vessel and of such part of the cargo as belongs to her owner.

United States regulations.—It was provided in the United States instructions to blockading vessels and cruisers of June 20, 1898:

16. A neutral vessel in the service of the enemy, in the transportation of troops or military persons, is liable to seizure.

Japanese regulations.—In the Japanese regulations of 1904 it is stated that—

ART. XXXVIII. Vessels carrying contraband persons, papers, or goods, but which do not know the outbreak of war, shall be exempt from capture.

The fact that the master of a vessel does not know the persons, papers, or goods on board to be contraband of war, or that he took them on board under compulsion, shall not exempt the vessel from capture.

Penalty for transport service.—The penalty for un-neutral service differs from that for the carriage of contraband:

It will be remembered that in the case of ordinary contraband trade the contraband merchandise is confiscated, but the vessel usually suffers no further penalty than loss of time, freight, and expenses. In the case of transport of dispatches or belligerent persons, the dispatches are of course seized, the persons become prisoners of war, and the ship is confiscated. The different treatment of the ship in the two cases corresponds to the different character of the acts of its owner. For simple carriage of contraband the carrier lies under no presumption of enmity towards the belligerent, and his loss of freight, etc., is a sensible deterrent from the forbidden traffic; when he enters the service of

the enemy seizure of the transported objects is not likely to affect his earnings, while at the same time he has so acted as fully to justify the employment towards him of greater severity. (Hall, *International Law*, 5th ed., p. 678.)

In the transport of persons in the service of a belligerent, the essence of the offense consists in the intent to help him; if, therefore, this intent can in any way be proved, it is not only immaterial whether the service rendered is important or slight, but it is not even necessary that it shall have an immediate local relation to warlike operations. It is possible for a neutral carrier to become affected by responsibility for a transport effected to a neutral port, and it may perhaps be enough to establish liability that the persons so conveyed shall be in no civil employment. (Hall, *International Law*, 5th ed., p. 677.)

The penalty for illegal transport service can not end with the confiscation of dispatches.

Indépendamment des peines imposées par les législations nationales—peines qui doivent être identiques au possible et s'accorder avec le droit international—les navires coupables de services de transport sont confisqués ainsi que les dépêches et objets illicites, les personnes illégalement transportées et les pilotes contrevenants peuvent être faits prisonniers, et les patrons ou armateurs en faute perdent leur prétention au fret et aux frais. (I Kleen, *La neutralité*, p. 474.)

Dana, in a note to *Wheaton's International Law*, says:

If a vessel is in the actual service of the enemy as a transport, she is to be condemned. In such case it is immaterial whether the enemy has got her into his service by voluntary contract or by force or fraud. It is also, in such cases, immaterial what is the number of the persons carried, or the quantity or character of the cargo; and, as to dispatches, the court need not speculate upon their immediate military importance. It is also unimportant whether the contract, if there be one, is a regular letting to hire, giving the possession and temporary ownership to the enemy, or a simple contract of affreightment. The truth is, if the vessel is herself under the control and management of the hostile government, so as to make that government the owner pro tempore, the true ground of condemnation should be as enemy's property. (Note 228, p. 643.)

International Law Association discussion.—Mr. Douglas Owen, at the meeting of the *International Law Association* in 1905, proposed that Great Britain should take measures to protect mail and passenger steamers, saying:

1. In the first place the royal proclamation should, in the case of mail and passenger steamers, be regarded as something more

than a pious wish. It should be given the force of a legal prohibition, with punitive enactments.

2. Owners knowingly carrying contraband goods, and traders shipping contraband goods, by such vessels should be rigorously dealt with; the fraudulent misdescription of contraband goods being treated as a grave offense.

3. Shipowners put to loss or expense through the illegal shipment of contraband, or cargo owners similarly damnified by the illegal carriage of contraband, to have the right to claim compensation from the wrongdoers.

4. Contraband goods illegally shipped or intended to be shipped to be subject to confiscation.

5. The penalties for breach of the (suggested) law to be enforceable notwithstanding the successful delivery of the contraband goods.

6. Persons giving information of breach or intended breach of the law to be rewarded by a proportion of the value of the confiscated goods, or otherwise.

7. Insurances in contravention of the law to be null and void, with penalties upon the underwriters knowingly effecting such insurances.

8. Shipowners under Government subsidy for the carriage of mails or license for the conveyance of passengers to give pecuniary guarantees for observance of the (suggested) special laws against carriage of contraband.

I submit that there would be nothing unreasonable or impracticable in such laws, and that few, if any, British subjects would dare to attempt their breach or evasion. Contraband traders would, instead, make use of ships to which the laws did not apply. The shipment and carriage of contraband by mail and passenger steamers from Great Britain would cease, and with such cessation would disappear any reason for their capture. It may be objected that the British law would not prevent the shipment of disguised contrabands by British liners loading cargo at Continental ports. I admit it; but if the regulations which I have sketched were adopted by all the states; if they were, in fact or effect, made international, the mail and passenger steamers of every nation would be closed to the trade in contraband. The offense would be equally preventable and punishable, whether committed by a foreign merchant against a British ship, or conversely by a British merchant against a foreign ship. It is my firm belief that the effect of an international law on the lines indicated would operate with such success that before long there would be a universal demand for similar restrictions, in protection of neutral traders generally, in the case of recognized liners sailing with the regularity of mail and passenger steamers, but by reason of their slower speed not in the category of such special vessels. (22d Report, p. 62.)

At this meeting of the International Law Association at Christiania in 1905, Mr. Douglas Owen, offered the following resolution which, after amendment, was adopted:

That in the opinion of this conference the time has come for protecting the world's mail and passenger steamers from belligerent seizure, and that with this object international legislation should be adopted to prevent the shipment and carriage of contraband of war by such vessels, and to render the same a punishable offense. (22d Report, p. 73.)

In seconding the resolution, Sir Walter Phillimore said:

I rise to second the proposal of Mr. Douglas Owen, because I agree on the whole with what he has proposed. Two things seem to me to be very obvious. The first thing is that it is quite impossible that all the mail steamers of the world, with their enormous cargoes and enormous interests at stake of private importance and public importance, and their large number of passengers, should be liable, as they are liable, to be visited and to be taken into a port of some belligerent nation, a port which may be 1,000 miles away, on suspicion that they are carrying contraband of war. It seems to me impossible that they should continue. It also seems to me impossible to deprive belligerents of their rights to stop contraband of war being carried by passenger mail steamers with valuable commercial cargoes. If mail steamers are carrying contraband of war, the belligerents have a right to prevent it, and therefore we must try to reconcile the two rights; that is to say, try to secure a belligerent from having contraband of war carried by passenger mail steamers, and try, on the other hand, to secure the neutral passengers on mail steamers from visit and detention and deviation into some port belonging to the captor. One way which Mr. Douglas Owen suggests is that the neutral nation should intervene and give, as it were, its word of honor that its passenger steamers would not convey contraband, and should enforce that by a Government inspection and by making it a criminal offense for such vessels to ship contraband. That is one way of doing it. Another way that has occurred to me is that without any such legislation a large steamship owner might put himself in communication with his own government, and might say: "I am ready to submit to any inspection which you like to make; I am willing to give bonds to pay if I fail, not only at the port of original dispatch, but at all ports at which my ships touch, if you will put your agents on board to inspect. On the other hand, I ask you to communicate with the two belligerents, and to obtain from them a letter or license for me that my ship, fulfilling those conditions, shall not be arrested in the course of the voyage, or, at any rate, not arrested on suspicion that it is not

fulfilling all the conditions, but has taken some goods on board for transit which it ought not to do." There is a third way in which it might be done, even perhaps more direct. The steamship company might put itself, through its manager, in communication direct with the two belligerents, and might say: "Send down to Southampton, or to the docks in London, or to New York, a Japanese agent from Japan and a Russian agent from Russia, or if you like, somebody you can trust—your consul or anybody else—and I will ship under the supervision of any agent you like to appoint, and then I ask each of you in turn not to arrest me on the high seas." All these are various ways of meeting the end to be attained. Perhaps the most official way is that which is suggested by Mr. Douglas Owen. I feel convinced, having thought a good deal on this subject, that the time has come, not for diminishing the effective rights of belligerents, but for preventing the *Prinz Heinrich*, or one of the English mail steamers, or great American liners like the *Paris*, being diverted for 1,000 miles from her course, with all her passengers on board, on suspicion of having contraband of war. For these reasons I second Mr. Douglas Owen's proposal. (Applause.) (Ibid., p. 91.)

Rules of the Institute of International Law.—The Institute of International Law in 1896 adopted the following rules in regard to transport service:

SEC. 6. Il est défendu d'attaquer ou empêcher le transport de diplomates ou courriers diplomatiques: 1^a neutres, 2^a accrédités auprès de gouvernements neutres; 3^a naviguant sous pavillon neutre entre des ports neutres ou entre un port neutre et le port d'un belligérant.

Au contraire, le transport des diplomates d'un ennemi accrédités auprès de son allié est, sauf le trafic régulier et ordinaire, interdit; 1^a sur les territoires et eaux des belligérants; 2^a entre leurs possessions; 3^a entre les belligérants alliés.

SEC. 7. Sont interdits les transports de troupes, militaires ou agents de guerre d'un ennemi; 1^a dans les eaux des belligérants; 2^a entre leurs autorités, ports, possessions, armées ou flottes; 3^a lorsque le transport se fait pour le compte ou par l'ordre ou le mandat d'un ennemi, ou bien pour lui amener soit des agents avec une commission pour les opérations de la guerre, soit des militaires étant déjà à son service ou des troupes auxiliaires ou enrôlées contrairement à la neutralité, entre ports neutres, entre ceux d'un neutre et ceux d'un belligérant, d'un point neutre à l'armée ou la flotte d'un belligérant.

L'interdiction ne s'étend pas au transport de particuliers qui ne sont pas encore au service militaire d'un belligérant, lors même qu'ils auraient l'intention d'y entrer, ou qui font le trajet comme simples voyageurs sans connexité manifeste avec le service militaire.

SEC. 8. Entre deux autorités d'un ennemi, qui se trouvent sur quelque territoire ou navire lui appartenant ou occupé par lui, est interdit, sauf le trafic régulier et ordinaire, le transport de ses dépêches (communications officielles entre autorités officielles).

L'interdiction ne s'étend pas aux transports soit entre ports neutres, soit en provenance ou à destination de quelque territoire ou autorité neutre. (15 Annuaire de l'Institut de Droit international, 1896, p. 231.)

Summary.—In any rules which might be proposed it would seem proper—

1. That a belligerent refraining from interference with a neutral or belligerent mail or passenger vessel which naturally might be of service to its opponent should have a right to demand that a reasonable assurance be given that such vessel should not be put to any war use if permitted to continue its regular traffic.

2. That neutrals should claim that regular mail and passenger service which in no way affects the conduct of hostilities should be free from interference.

3. That neutrals or belligerents to whom exemption from interference is conceded should be willing to take reasonable care in order that the concession be not abused. This can probably be done effectively by certification as to the character and guaranties as to use.

From regulations, opinions, precedents, and theories it would seem that the following rules should be established by international agreement:

Conclusion.—(a) Neutral mail or passenger vessels, of regular lines established before and not in contemplation of the outbreak of hostilities, bound upon regular voyages and furnishing satisfactory government certification that they are mail or passenger vessels, and do not carry contraband, are exempt from interference except on ample grounds of suspicion of action not permitted to a neutral.

(b) Mail or passenger vessels of belligerents, of similar lines, upon regular voyages, plying to neutral ports should be exempt from interference under such restrictions as will prevent their use for war purposes.

(c) Mail or passenger vessels, similarly plying between belligerent ports, may, under such restrictions as the belligerents may agree upon, be exempt from interference.